THE HIGH COURT
JUDICIAL REVIEW

[2021] IEHC 416
RECORD NO: 2020/427JR

BETWEEN:

ZA

APPLICANT

-AND-

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
AND THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on the 2nd June, 2021

General

1. The Applicant is a national of Pakistan from Sialkot, which is a border region in the Punjab province. He entered the State on 14 June 2014 and made a claim for international protection on 11 September 2018.

2. On 30 September 2019, an International Protection Officer (hereinafter referred to as an "IPO") recommended that the Applicant be granted neither a refugee or subsidiary protection declaration. He appealed the negative recommendation to the First Respondent who upheld the first instance recommendation.

3. Leave to apply by way of Judicial Review seeking an order of certiorari quashing the decision of the First Respondent was granted by the High Court on 22 July 2020.

The Protection Claim

4. The Applicant claimed that ten years earlier his family had beaten, imprisoned and threatened him after he refused to agree to marry his cousin. He asserted that he feared for his life if he returned to Pakistan.

5. The IPO found the material elements of his claim not to be credible. However, in considering his subsidiary protection claim and the question of whether he was at real risk of serious harm, as provided for pursuant to Article 15(c) of the Qualifications Directive, if returned to Pakistan, it accepted, having considered Country of Origin Information (hereinafter referred to as "COI") that the situation in Pakistan amounted to a situation of indiscriminate violence within an international/internal armed conflict. The IPO further found, having regard to EASO's, COI Report Pakistan Security Situation October 2018, that:-

> "[T]he indiscriminate violence to which the Applicant may be exposed, along with reference to specific factors particular to this Applicant's personal circumstances, reaches such a high level that substantial grounds have been shown for believing that the Applicant, if returned to his country of origin, would, solely on account of his presence on the territory of that country, face a real risk of being subject to a serious and individual threat to his life or person…"

6. The IPO also determined that having regard to this COI, state protection was not available to the Applicant in Sialkot. However, the IPO proceeded to hold that internal

relocation was available to the Applicant and that he would not face a real risk of serious harm if he was returned to Karachi. Accordingly, it recommended against a declaration of subsidiary protection being granted to the Applicant.

7. On appeal, the First Respondent did not find the material elements of the Appellant's claim to be credible and rejected the material facts of his claim. However, the First Respondent also found that having considered all of the COI, including the most up to date EASO report published in October 2019, the Applicant was not at real risk of serious harm, as provided for pursuant to Article 15(c) of the Qualifications Directive. The First Respondent noted that Sialkot was only mentioned once in the body of the 2019 EASO report wherein it was stated that "while cross border shelling impacted civilians in Sialkot in 2018, there was no evidence of the same in the first seven months of 2019".

Grounds of Challenge

8. The Applicant's challenge to the First Respondent's decision is that the First Respondent failed to bring to the Applicant's attention the 2019 EASO report prior to making its determination in the matter, the result of which is that the Applicant did not have the opportunity to make submissions thereon to the First Respondent. It is submitted that this failure breaches the principle of audi alteram partem and furthermore is a breach of s. 46(8)(b) of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act").

9. The Respondent's response to this challenge is that it is incumbent on practitioners specialising in this area of the law to be familiar with all up to date, readily available and relevant COI and that there was not a duty on the First Respondent to bring the recent EASO report to the Applicant's attention. Furthermore, it is argued that the decision of the First Respondent was not based solely on the recent 2019 EASO report but rather the First Respondent took a different view than the IPO of the COI in its entirety.

10. A careful reading of footnote 5 of the First Respondent's decision reveals that the First Respondent did take a different view than the IPO regarding the entirety of the COI. However, it is equally clear that this view was formed having also considered the recent 2019 EASO report.

11. Counsel for the Respondents makes the point that the appeal before the First Respondent was an appeal de novo and that the First Respondent was free to determine any matter itself without being required to find an error with any earlier finding of the IPO. This is an accurate statement of the law - the First Respondent was in no way bound by any earlier determination of the IPO.

12. Counsel for the Applicant is also correct that in the immigration law sphere, caselaw exists indicating that the principles of audi alteram partem do not require the decision maker to notify an applicant's legal representatives of up to date, readily available and relevant COI.

13. However, the application of the principle of audi alteram partem and the determination of whether it has been complied with must be considered having regard to the facts and circumstances of each individual case. Whilst the First Respondent was of the view that the COI taken in its entirety did not support the proposition that the Applicant was at a real risk of suffering serious harm, it is clear that it formed this view in light of the evolving situation on the ground in Pakistan, as evidenced in the 2018 and 2019 EASO reports, rather than simply taking a different view of the COI to that of the IPO.

14. On the particular facts of this case, the 2018 EASO report had a distinct significance for the Applicant. The 2019 EASO report altered that significance. In light of the importance of that change for the Applicant, it is appropriate that the Applicant would have had an opportunity to make representations to the First Respondent in respect of same.

15. Whilst it is expected that practitioners specialising in this area have a knowledge of all up to date, readily available and relevant COI, the significant consequence of this COI for the Applicant mandated the First Respondent, at the very least, to bring this material to the Applicant's attention and invite submissions on it. This was a relatively simple process to engage in which unfortunately was not availed of by the First Respondent.

16. As stated by Clarke J in *Idiakheua v. The Refugee Appeals Tribunal* [2005] IEHC 150:-

> "If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination an issue which was not raised, or raised to any significant extent, or sufficient at the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it. This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicant's advisors or, indeed, legal issues which might be likely only to be addressed by the applicant's advisors. In setting out the above, I would wish to make clear that the obligation to fairly draw the attention of the applicant or the applicants advisors to issues which may be of concern to the Tribunal arises only in respect of matters which are of substance and significance in relation to the Tribunal's determination".

17. Accordingly, in the particular circumstances of this case and having regard to the significance of the change of import in the COI, there was a breach of the principle of audi alteram partem.

18. Whilst the First Respondent made very significant credibility findings against the Applicant in relation to his claim, its consideration of whether there was a real risk of serious harm

pursuant to Article 15(c) of the Qualifications Direction does not relate to such credibility findings but rather is an objective determination of whether a substantial risk of serious harm arises for an individual by reason of indiscriminate violence in a situation of international or internal armed conflict in his home region.

19. Furthermore, there was a breach by the First Respondent of s. 46(8)(b) of the International Protection Act 2015 which states:-

> "(8) The Tribunal shall furnish the applicant concerned and his or her legal representative (if known), and the High Commissioner whenever so requested by him or her, with—
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> (a) copies of any reports, observations, or representations in writing or any other document furnished to the Tribunal by the Minister, copies of which have not been previously furnished to the applicant and his or her legal representative (if known), or as the case may be, the High Commissioner, and
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> (b) an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal."

20. No indication, of any sort, was given to the Applicant or his legal representatives regarding the 2019 EASO report.

21. I therefore will grant the Applicant an order of certiorari of that portion of the First Respondent's decision dealing with the Applicant's claim for subsidiary protection pursuant to Article 15(c) of the Qualifications Directive and remit that portion of the decision to another member of the First Respondent for re-consideration. I also will make an order for the Applicant's costs as against the Respondents.